

SENATE BILL 2813

By Roberts

AN ACT to amend Tennessee Code Annotated, Title 4;
Title 65, Chapter 1, Part 1 and Title 65, Chapter 4,
Part 1, relative to the creation of the office of the
public advocate.

WHEREAS, Chapter 349 of the Public Acts of 2021, enacted by the 112th General Assembly, directed the Tennessee public utility commission to submit a written report that includes a detailed plan to transfer the consumer advocate division in the office of the attorney general and reporter to the Tennessee public utility commission; and

WHEREAS, in the interest of economy, efficiency, and better coordination of the functions of state government, jurisdiction of public utility customer interests and representation in applicable matters contained in Tennessee Code Annotated, Title 65, should be transferred to the Tennessee public utility commission; and

WHEREAS, the Tennessee public utility commission has rate-setting jurisdiction relative to investor-owned public utilities as defined in Tennessee Code Annotated, Section 65-4-101, where market competition does not exist; and

WHEREAS, matters before the Tennessee public utility commission include, but are not limited to, complex rate-setting cases and utility acquisitions; and

WHEREAS, the Tennessee public utility commission strives to ensure that rates and acquisitions are transparent, just, reasonable, and in the public interest; and

WHEREAS, an independent office of the public advocate is essential to providing representation to customers who appear before the Tennessee public utility commission; and

WHEREAS, the Tennessee public utility commission has reviewed and analyzed similar independent utility advocate functions within other utility commission jurisdictions, and identified

Nebraska, North Carolina, West Virginia, and Wyoming as states with independent public advocate divisions within their respective utility commissions; and

WHEREAS, dockets before the Tennessee public utility commission may be lengthy and resource intensive, therefore it is important that utility companies and the office of the public advocate created herein strive to mediate and resolve issues without requiring them to be litigated; and

WHEREAS, as part of this transfer, it is vitally important for utility companies in this state and public advocate representatives to coordinate requests for data and information sharing outside of formal processes; now, therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 65-4-118, is amended by deleting the section and substituting:

(a) As used in this section, unless the context otherwise requires:

(1) "Commission" means the Tennessee public utility commission;

(2) "Director" means the director of the office of the public advocate;

(3) "Executive director" means the executive director of the Tennessee public utility commission; and

(4) "Office" means the office of the public advocate, attached to the Tennessee public utility commission.

(b)

(1) There is created an independent office of the public advocate, attached to the Tennessee public utility commission, consisting of personnel that may include attorneys, accountants, financial analysts, support personnel, and other personnel deemed necessary by the director for the function of the office.

The office is attached to the commission for administrative, fiscal, and personnel purposes only, and is to be operationally independent from the commission.

(2) The director is appointed by and serves at the pleasure of the commissioners of the Tennessee public utility commission. The director must be an attorney or certified public accountant licensed to practice in this state and must have at least five (5) years of work experience in the profession for which the director is a member.

(3) The director shall direct the activities of the office and shall, within established budgetary limitations, hire, fire, direct, and supervise other professional, technical, and support personnel as may be necessary to effectively represent the interests of consumers of public utility services under this section. The director and staff within the office are not subject to the direction or control of the executive director, chair of the commission, or members of the commission.

(c)

(1) The office has the duty and authority to represent the interests of persons in this state who are consumers of public utility services. The office may, with approval of the director:

(A) Evaluate the reasonableness of rates, charges, and practices of public utilities;

(B) Enter into agreements and stipulations with public utilities to balance the interests of persons it represents with the interests of public utilities to reduce formal litigation through contested cases and minimize the cost of regulation; and

(C) Participate or intervene as a party in a matter or proceeding before the commission, or an administrative, legislative, or judicial body,

and initiate such proceedings in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, and the rules of the commission.

(2) If an irreconcilable dispute arises, either in a contested case proceeding or a request for information outside of a contested case proceeding that involves a request for or exchange of information between the office and a public utility subject to the control and supervision of the commission, the objecting party may petition the commission, after notice to the affected party, to hear and resolve the dispute by order of the commission. The petition must state with particularity the information sought or objected to and the reasons for which the information should be either provided or not provided. The office may also request information from the commission staff and, if the commission staff is in possession of the requested information, the information must be provided within ten (10) business days of the request.

(d) The director may initiate an appeal of a commission order or decision on the office's behalf, with the same rights of appeal as other parties to commission proceedings in accordance with § 4-5-322. The defense of an appeal initiated by the office is the responsibility of the commission through its legal staff.

(e) The office may enter into agreements regarding the nondisclosure of trade secrets or other confidential commercial information obtained by the office.

(f) The office may employ expert witnesses and other professional experts as the director deems necessary to assist the office staff with matters or proceedings before the commission or other administrative, legislative, or judicial body. The compensation and expenses for witnesses and experts must be paid from the office's budget. The

procurement of and contracting with witnesses and experts are exempt from the public purchasing requirements of title 12, chapter 3.

(g) The director shall prepare an annual budget for the office for the next fiscal year and submit the budget for inclusion in the commission's budget request. However, the budget must be separately delineated for review and final approval by the general assembly. Reports on the operations and other matters of the office must be filed by the director with the general assembly and the commission on the first Monday of February each year.

(h)

(1) The office is funded through a fee imposed on water, wastewater, electric, and natural gas public utilities doing business in this state who are subject to the control and supervision of the commission.

(2) The fee imposed under this subsection (h) is determined by the amount of the gross receipts from intrastate operations of each water, wastewater, electric, and natural gas public utility having in excess of one million dollars (\$1,000,000) in annual gross receipts from intrastate operations.

(3) The fee imposed against water, wastewater, electric, and natural gas public utilities is due beginning October 1, 2022, and on or before April 1, 2023, and each April 1 thereafter, and is based on the previous calendar year's gross receipts from intrastate operations. The fee is two dollars (\$2.00) per one thousand dollars (\$1,000) of such gross receipts.

(4) The fee imposed under this subsection (h) may be recovered by a public utility through either a rate case proceeding under § 65-5-103 or a separate recovery mechanism to be determined by the commission. This section does not alter the limitations on the jurisdiction of the commission over market-

regulated companies as set forth in § 65-5-109. A public utility may also recoup the fees imposed under this subsection (h) by including a line item on its customer bills.

(5) The commission shall collect the fee imposed under this subsection (h) and deposit the proceeds collected into the state treasury within the commission's public utilities account. The proceeds are to be segregated within the account.

(6) A public utility that is in default in paying the fee or a part of the fee when due must pay a penalty of ten percent (10%) per month, or fraction thereof, on the amount of the fee that may be recovered by suit of the state for every month it remains in default. Every penalty collected must be deposited into the state treasury as a part of the utilities account; however, the commission may employ and compensate a licensed attorney from the utilities account to bring an action in a court of competent jurisdiction to recover the penalty. The attorney must not be compensated more than the amount of the penalty imposed.

(7) As used in this subsection (h), "gross receipts from intrastate operations" means total revenues that are recognized by the commission as utility revenue for the purpose of setting intrastate rates under chapter 5 of this title.

(i) All case files, records, and positions of employment dedicated to the consumer advocate division in the office of the attorney general and reporter are transferred to the office. The office is automatically substituted as a party to a proceeding before the commission in which the consumer advocate is a party. Proceedings following the substitution are to be in the name of the office of the public

advocate. An order of substitution may be entered at any time. However, failure to enter an order does not affect the substitution.

SECTION 2. Tennessee Code Annotated, Section 4-29-243(a) is amended by deleting subdivision (10).

SECTION 3. Tennessee Code Annotated, Section 4-29-245(a) is amended by inserting the following as a new subdivision:

() Office of the public advocate, attached to the Tennessee public utility commission, created by § 65-4-118.

SECTION 4. Tennessee Code Annotated, Section 65-1-103(b) is amended by deleting the subsection and substituting:

(b)

(1) The commission may utilize its deferred revenue account to fund:

(A) The nonrecurring costs related to the transfer of the duties and authority of the consumer advocate division in the attorney general and reporter to the commission; and

(B) An annual operating budget shortfall of the office of the public advocate, created in § 65-4-118.

(2) As used in this section, "deferred revenue account" means an account created for the excess earnings from utilities regulated by the commission.

SECTION 5. If any provision of this act or its application to any person or circumstance is held invalid, then the invalidity does not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to that end, the provisions of this act are severable.

SECTION 6. For the purpose of appointing the director of the office of the public advocate this act takes effect upon becoming a law, the public welfare requiring it. For all other purposes this act takes effect July 1, 2022, the public welfare requiring it.